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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 KURT A. WILLMAN,
12 CDC #J-00074,

13 Plaintiff,

14
15 vs.
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17 ROBERT HERNANDEZ; DR. HUNT;
18 DR. KINJI L. HAWTHORNE;
19 CYNTHIA DUHON and N. GRANNIS,

20 Defendants.
21
22

Civil 07-0816 JM (PCL)
No.

ORDER:

**(1) GRANTING MOTION TO
PROCEED *IN FORMA PAUPERIS*,
IMPOSING NO INITIAL FILING
FEE, GARNISHING BALANCE
FROM PRISONER'S TRUST
ACCOUNT [Doc. No. 4];**

AND

**(2) DIRECTING U.S. MARSHAL
TO EFFECT SERVICE
PURSUANT TO FED.R.CIV.P.
4(c)(2) AND
28 U.S.C. § 1915(d)**

23 Plaintiff, an inmate currently incarcerated at Salinas Valley State Prison located
24 in Soledad, California, and proceeding pro se, has filed a civil rights Complaint pursuant
25 to 42 U.S.C. § 1983.¹ Plaintiff alleges that, while he was housed at the Richard J.
26 Donovan Correctional Facility ("Donovan"), jail officials unnecessarily delayed in
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28 ¹ The proceedings were assigned to this Court, but have been referred to Magistrate Judge Peter C. Lewis by Local Rule 72.3(e), "Assignment of § 1983 Prisoner Civil Cases to United States Magistrate Judges," pursuant to 28 U.S.C. § 636.

1 providing him with prescription eyeglass in violation of his Eighth Amendment right to
2 adequate medical care. As a result, Plaintiff suffered “blinding headaches” and blurred
3 vision.

4 Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a);
5 instead, he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28
6 U.S.C. § 1915(a) [Doc. No. 4].

7 **I. Motion to Proceed IFP [Doc. No. 4]**

8 All parties instituting any civil action, suit or proceeding in a district court of the
9 United States, except an application for writ of habeas corpus, must pay a filing fee of
10 \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party’s failure to
11 prepay the entire fee only if that party is granted leave to proceed IFP pursuant to 28
12 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).
13 Prisoners granted leave to proceed IFP however, remain obligated to pay the entire fee
14 in installments, regardless of whether their action is ultimately dismissed. *See* 28 U.S.C.
15 § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

16 The Court finds that Plaintiff has submitted an affidavit which complies with 28
17 U.S.C. § 1915(a)(1), and that he has attached a certified copy of his trust account
18 statement pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. Plaintiff’s trust
19 account statement indicates that he has insufficient funds from which to pay filing fees
20 at this time. *See* 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner
21 be prohibited from bringing a civil action or appealing a civil action or criminal judgment
22 for the reason that the prisoner has no assets and no means by which to pay the initial
23 partial filing fee.”). Therefore, the Court **GRANTS** Plaintiff’s Motion to Proceed IFP
24 [Doc. No. 4] and assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1).
25 However, the entire \$350 balance of the filing fees mandated shall be collected and
26 forwarded to the Clerk of the Court pursuant to the installment payment provisions set
27 forth in 28 U.S.C. § 1915(b)(1).

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1 **II. Sua Sponte Screening pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A**

2 The PLRA also obligates the Court to review complaints filed by all persons
 3 proceeding IFP and those, like Plaintiff, who are “incarcerated or detained in any facility
 4 [and] accused of, sentenced for, or adjudicated delinquent for, violations of criminal law
 5 or the terms or conditions of parole, probation, pretrial release, or diversionary program,”
 6 “as soon as practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b).
 7 Under these provisions, the Court must sua sponte dismiss prisoner and all other IFP
 8 complaints, or any portions thereof, which are frivolous, malicious, fail to state a claim,
 9 or which seek damages from defendants who are immune. *See* 28 U.S.C. §§
 10 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27
 11 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir.
 12 2000) (§ 1915A).

13 Here, the Court finds that Plaintiff’s allegations, if presumed true as they must at
 14 this stage of review, are sufficient to survive the initial screening provisions of 28 U.S.C.
 15 §§ 1915(e)(2) and 1915A(b). *See* Compl. at 3-10; *Lopez*, 203 F.3d at 1126-27 (9th Cir.
 16 2000) (“The language of section 1915(e)(2), as it applies to dismissals for failure to state
 17 a claim, ‘parallels the language of Federal Rule of Civil Procedure 12(b)(6).’”) *quoting*
 18 *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998); *Resnick*, 200 F.3d at 644
 19 (when conducting sua sponte screening pursuant to 28 U.S.C. § 1915, court must construe
 20 pro se pleadings liberally). However, Plaintiff is cautioned that “the sua sponte screening
 21 and dismissal procedure is cumulative of, and not a substitute for, any subsequent Rule
 22 12(b)(6) motion that [a defendant] may choose to bring.” *Teahan v. Wilhelm*, 481
 23 F.Supp.2d 1115, 1119 (S.D. Cal. 2007).

24 **III. Conclusion and Order**

25 Good cause appearing, **IT IS HEREBY ORDERED** that:

- 26 1. Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) [Doc. No.
 27 4] is **GRANTED**.

1 2. The Secretary of California Department of Corrections and Rehabilitation,
2 or his designee, is ordered to collect from Plaintiff's prison trust account the \$350 balance
3 of the filing fee owed in this case by collecting monthly payments from the trust account
4 in an amount equal to twenty percent (20%) of the preceding month's income credited
5 to the account and forward payments to the Clerk of the Court each time the amount in
6 the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). ALL PAYMENTS
7 SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED
8 TO THIS ACTION.

9 3. The Clerk of the Court is directed to serve a copy of this order on James
10 Tilton, Secretary, California Department of Corrections and Rehabilitation, P.O. Box
11 942883, Sacramento, California 94283-0001.

12 **IT IS FURTHER ORDERED** that:

13 4. The Clerk shall issue the summons, provide Plaintiff with a certified copy
14 of both this Order and his Complaint, and forward them to Plaintiff along with a blank
15 U.S. Marshal Form 285 for each Defendant named in his Complaint. Plaintiff shall
16 complete the Form 285s and forward them to the United States Marshal. The U.S.
17 Marshal shall then serve a copy of the Complaint and summons upon Defendants as
18 directed by Plaintiff on each U.S. Marshal Form 285. All costs of service shall be
19 advanced by the United States. *See* 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(c)(2).

20 5. Defendants are thereafter **ORDERED** to reply to the Complaint within the
21 time provided by the applicable provisions of Federal Rule of Civil Procedure 12(a). *See*
22 42 U.S.C. § 1997e(g)(2) (while Defendants may occasionally be permitted to "waive the
23 right to reply to any action brought by a prisoner confined in any jail, prison, or other
24 correctional facility under section 1983," once the Court has conducted its sua sponte
25 screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made a
26 preliminary determination based on the face on the pleading alone that Plaintiff has a
27 "reasonable opportunity to prevail on the merits," Defendants are required to respond).
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